



[4337-15-P]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AABB003600/A0T902020.999900.253G]

Delaware Nation; Beverage Control Act of 2019

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Delaware Nation Beverage Control Act of 2019 (Alcohol Ordinance). The Alcohol Ordinance regulates and controls the possession, sale, manufacture, and distribution of alcohol on Delaware Nation trust lands in conformity with the laws of the State of Oklahoma where applicable and necessary. Although the Alcohol Ordinance was adopted on March 5, 2019, it does not become effective until published in the Federal Register.

DATES: This Alcohol Ordinance takes effect on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Ms. Sherry Lovin, Tribal Government Officer, Southern Plains Regional Office, Bureau of Indian Affairs, Post Box 368, Anadarko, Oklahoma 73005, telephone: (405) 247-1534, fax: (405) 247-1534; or Ms. Laurel Iron Cloud, Chief, Division of Tribal Government Services, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street NW, MS-3645-MIB, Washington, DC 20240, telephone: (202) 513-7641.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83-277, 67 Stat. 5886, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v.*

Rehner, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the *Federal Register* notice of adopted liquor control ordinances for the purpose of regulating liquor transactions in Indian country. On March 5, 2019, the Delaware Nation Executive Committee duly adopted the Delaware Nation Beverage Control Act of 2019. This Notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary – Indian Affairs. I certify that the Delaware Nation Executive Committee duly adopted by Resolution No. 2019-031 this Delaware Nation Beverage Control Act of 2019 on March 5, 2019.

Dated: June 25, 2019

Tara Sweeney,
Assistant Secretary – Indian Affairs.

Authority: 18 U.S.C. 1161

The Delaware Nation Beverage Control Act of 2019 shall read as follows:

Alcohol Ordinance of the Delaware Nation

Findings:

The Delaware Nation (hereinafter “the Nation”) is a federally-recognized Indian tribe, exercising jurisdiction over all Tribal Lands as specified herein.

The Nation's Constitution, Article VI, Section 2, empowers the Executive Committee of the Nation to promulgate ordinances and resolutions for the Nation.

The sale of Alcohol subject to the terms and provisions of this Alcohol Ordinance and all applicable laws, shall provide funds for the continued operation and strengthening of the Tribal government and the delivery of Tribal government services. It shall also produce capital which the Nation can use to further develop its economy.

The enactment of this Alcohol Ordinance will also increase the ability of the Nation's government to control the distribution and possession of Alcohol within the Tribal Lands.

NOW THEREFORE, to permit the sale of Alcohol subject to the necessary controls and to promote the health, safety and welfare of its members, the Executive Committee adopts this Alcohol Ordinance.

Introduction:

101. Title. This Ordinance shall be known as the "Alcohol Ordinance of the Delaware Nation.

102. Authority. This Alcohol Ordinance is enacted pursuant to the Act of August 15, 1953 (Pub. L. No. 83-277, 67 Stat. 588 (codified at 18 U.S.C. § 1161), the Constitution of the Delaware Nation as ratified on April 21, 1973, as amended from time to time, and all other applicable law.

103. Purpose. The purpose of this Alcohol Ordinance is to regulate and to control the possession and sale of Alcohol to and within the jurisdiction of the Delaware Nation. The

Tribal Lands as specified in this Ordinance are limited in nature and do not encompass all land within the Tribe's jurisdiction, as is stated in Section 210 herein. The enactment of a Tribal ordinance governing Alcohol possession and sale within the Tribal Lands will increase the ability of the Tribal government to control Alcohol distribution and possession and provide an important source of revenue for the continued operation and strengthening of the Tribal government and the delivery of Tribal government services.

104. Jurisdiction. This Ordinance applies on all Tribal Lands as specifically defined herein.

Definitions:

201. As used in this Alcohol Ordinance, the following words shall have the following meanings unless the context clearly requires otherwise.

202. "Alcohol" means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit or wine which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions of this substance.

203. "Alcoholic Beverage" is synonymous with the term "Alcohol" as defined in Section 202 of this Chapter.

204. "Bar" means any establishment with special space and accommodations for sale by the glass and for consumption on the premises of any alcoholic beverage, as herein defined.

205. "Executive Committee" as used herein means the duly-elected governing body authorized by the Nation's Constitution to promulgate all Tribal ordinances and regulations.

206. “General Council” means the Council of the Tribe, which comprises all individual citizens of the Tribe who are 18 years old or older.

207. “Sale” and “Sell” include exchange, barter, and traffic and also include the selling or supplying or distributing by any means whatsoever, of Alcohol or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed Alcohol or wine by any person to any person.

208. “Spirits” means any beverage which contains alcohol obtained by distillation including wines exceeding 17% of alcohol by weight.

209. “Tribe” means the Delaware Nation.

210. “Tribal Lands” means the 20 acres of land held in trust by the United States for the benefit of the Delaware Nation upon which a gaming facility of the Nation known as Casino Oklahoma exists, with a street address of 220 East Cummins Road, Hinton, Oklahoma 73047, more specifically described as:

BEGINNING at a point on the South line of the said SE/4, 471.01 feet South 88°15’07” East of the Southwest corner of the SE/4 of Section 10, Township 12 North, Range 11 West of the Indian Meridian, Caddo County, Oklahoma;

THENCE North 00°18’48” West 390 feet from and parallel with the East Right-of-Way line of

Highway 281, a distance of 363.00 feet;

THENCE South 89°45'00": West 139.50 feet, to a point 250.50 feet East of said East Right-of-Way line;

THENCE North 0°18'48" West, parallel with said East Right-of-Way, a distance of 741.86 feet to a point 275.50 feet East of said Right-of-Way 330.00 feet East of the West line of said SE/4;

THENCE North 0°15'00" West 330.00 feet from and parallel with the West line of said SE/4 a distance of 1146.84 feet to the South Right-of-Way line of Interstate 40;

THENCE North 69°19'39" East along said South Right-of-Way line a distance of 253.10 feet;

THENCE South 89°50'51" East along said Right-of-Way line a distance of 161.07 feet;

THENCE South 0°15'00" East parallel with the West line of said SE/4, a distance of 2347.87 feet to the South line of said SE/4;

THENCE North 88°15'07" West along said South line a distance of 257.69 feet to the point of beginning, containing an area of 871,200 square feet or 20.00 acres, more or less.

Any lands Delaware Nation has been granted permanent use.

211. "Trust Agent" means the Nation's Tax Commission or its designee.

212. "Wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, etc.) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not

more than seventeen percent (17%) of alcohol by weight, including sweet wines fortified with wine spirits such as port, sherry, muscatel and angelica, not exceeding seventeen percent (17%) of alcohol by weight.

Powers of Enforcement:

301. Powers. The Executive Committee, in furtherance of this Alcohol Ordinance, shall have the following powers and duties:

- a. To publish and enforce the rules and regulations governing the sale, manufacture, and distribution of Alcoholic Beverages on Tribal Land;
- b. To employ managers, accountants, security personnel, inspectors, and such other persons as shall be reasonably necessary to allow the Executive Committee to perform its functions;
- c. To issue licenses permitting the sale or manufacture or distribution of Alcohol within the Tribal Lands;
- d. To bring suit in the appropriate court to enforce this Alcohol Ordinance as necessary;
- e. To determine and seek damages for violation of this Alcohol Ordinance;
- f. To make reports to the General Council;
- g. To collect taxes and fees levied or set by the Executive Committee, and to keep accurate records, books, and accounts;
- h. To exercise such other powers as authorized by Tribal law; and

i. To delegate authorities under this Alcohol Ordinance to Subcommittees, Commissions, or Boards.

302. Limitation on Powers. In the exercise of its powers and duties under this Alcohol Ordinance, the Executive Committee as a whole and its individual members shall not accept any gratuity, compensation or other thing of value from any Alcohol wholesaler, retailer, distributor or licensee.

303. Inspection Rights. The premises on which Alcohol is sold or distributed shall be open for inspection by an authorized designee at all reasonable times, which includes the hours the business is open to the public, for the purposes of ascertaining whether this Alcohol Ordinance and the rules and regulations implementing this Alcohol Ordinance are being followed.

Sales of Alcohol:

401. Tribal Alcohol License Required; Tribally-Owned Businesses. No sale of Alcoholic Beverages shall be made on Tribal Land, except at a Tribally-licensed or Tribally-owned business. Nothing in this section shall prohibit a Tribal licensee or the Nation from purchasing Alcohol from a source outside the Nation's jurisdiction for resale on Tribal Lands, or the delivery to the Nation or a Tribal licensee of Alcohol purchased from sources outside Tribal Lands for resale within the Tribal Lands. Each location shall obtain and maintain a Tribal license from the Executive Committee, or its designee, for the sale of Alcohol. Such license may be for the sale of Alcohol for off-premises or on-premises consumption.

402. Sale only on Tribal Land. All Alcohol Sales shall be on Tribal Land, including leases thereon.

403. Sales for Cash. All Alcohol sales shall be on a cash only basis, and no credit shall be extended to any person, organization, or entity, except that this provision does not prevent the use of ATM cards, debit cards, or credit cards.

404. Sale for Personal Consumption. Resale of any Alcoholic Beverage purchased within the Tribal Lands is prohibited. Any person who is not licensed pursuant to this Alcohol Ordinance who purchases an Alcoholic Beverage on Tribal Land and sells it, whether in the original container or not, shall be guilty of a violation of this Alcohol Ordinance and shall be subject to paying damages to the Nation as set forth herein.

Licensing:

501. Tribal Alcohol License Requirements. A Tribal license shall be issued under this Alcohol Ordinance by a designee of the Executive Committee upon proof of the following:

- a. Satisfactory proof that the applicant is or will be duly licensed by the State of Oklahoma to sell Alcoholic Beverages;
- b. Acceptance of a Tribal Alcohol License expresses acceptance of all conditions of the Tribal license.

502. Temporary Permits. The licensing designee may grant a temporary permit for the sale of Alcohol for a period not to exceed three (3) days to any person applying to the same in connection with a Tribal or community activity, provided that the conditions prescribed in

Section 503 of this Ordinance shall be observed by the permittee and the permittee shall have a valid Oklahoma ABLE Commission license.

503. Conditions of a Tribal Alcohol License. Any Tribal Alcohol license issued under this Alcohol Ordinance shall be subject to such reasonable conditions as the Executive Committee or its designee shall fix including but not limited to the following:

- a. The license shall be for a term to coincide with the applicant's Oklahoma ABLE Commission license.
- b. The licensed premises shall be subject to patrol by Tribal law enforcement personnel and such other law enforcement officials as may be authorized under Federal, Oklahoma, or Tribal law.
- c. The licensed premises shall be open to inspection by duly authorized Tribal officials at all times during the regular business hours.
- d. No Alcohol shall be sold, served, disposed of, delivered, or given to any person, or consumed on the licensed premises except in conformity with the hours and days prescribed by the laws of the State of Oklahoma.
- e. All acts and transactions under authority of the Tribal Alcohol license shall be in conformity with the laws of the State of Oklahoma, with this Alcohol Ordinance, with any applicable Tribal rules and regulations, and with any Tribal Alcohol license issued pursuant to this Alcohol Ordinance.

f. No person under the age permitted under the laws of the State of Oklahoma shall be sold, served, delivered, given, or allowed to consume Alcoholic Beverages in the licensed establishment or area.

g. There shall be no discrimination in the operations under the Tribal license by reason of sex, race, color, or creed, provided that Tribal licensees may adopt Tribal or Indian preference policies.

504. License Not a Property Right. Notwithstanding any other provision of this Alcohol Ordinance, a Tribal Alcohol license is a mere permit for a fixed duration of time. A Tribal Alcohol license shall not be deemed a property right or vested right of any kind, nor shall the granting of a Tribal Alcohol license give rise to a presumption of legal entitlement to a license or permit in a subsequent time period.

505. Assignment or Transfer. No Tribal license issued under this Alcohol Ordinance shall be assigned or transferred without the prior written approval of the Executive Committee expressed by formal resolution.

Civil Violations:

601. Sale or Possession With Intent to Sell Without a Permit. Any person who shall sell or offer for sale or distribute or transport in any manner, any Alcohol in violation of this Alcohol Ordinance, or who shall operate or shall have Alcohol in his or her possession with intent to sell or distribute without a license or permit, shall be guilty of a violation of this Alcohol Ordinance.

602. Purchases From Other Than Licensed or Allowed Facilities. Any person who, within the Tribal Lands, buys Alcohol from any person other than at a properly licensed or allowed facility shall be guilty of a violation of this Alcohol Ordinance.

603. Consuming Alcohol in Public Conveyance. Any person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant or employee or such person who shall knowingly permit any person to drink any Alcohol in any public conveyances shall be guilty of an offense. Any person who shall drink any Alcohol in a public conveyance shall be guilty of a violation of this Alcohol Ordinance.

604. Consumption or Possession of Alcohol by Persons Under 21 Years of Age. No person under the age of 21 years shall consume, acquire, or have in his or her possession any Alcohol. An employee of a tribally licensed facility age 18 to 20 with a valid ABLE license is permitted to transport alcohol for the purpose of serving customers. No person shall permit any other person under the age of 21 to consume Alcohol on his or her premises or any premises under his or her control except in those situations set out in this section. Any person violating this section shall be guilty of a separate violation of this Alcohol Ordinance for each and every drink so consumed.

605. Sales of Alcohol to Persons Under 21 Years of Age. Any person who shall sell or provide Alcohol to any person under the age of 21 years shall be guilty of a violation of this Alcohol Ordinance for each sale or drink provided.

606. Transfer of Identification to Minor. Any person who transfers in any manner an identification of age to a minor for the purpose of permitting such minor to obtain Alcohol

shall be guilty of an offense; provided, that corroborative testimony of witness other than the minor shall be a requirement of finding a violation of this Alcohol Ordinance.

607. Use of False or Altered Identification. Any person who attempts to purchase an Alcoholic Beverage through the use of a false or altered identification shall be guilty of violating this Alcohol Ordinance.

608. Acceptable Identification. Where there may be a question of a person's right to purchase Alcohol by reason of his or her age, such person shall be required to present any one of the following cards of identification which is not expired and shows his or her correct age and bears his or her signature and photograph: (1) A State-issued ID; (2) United States active duty military; (3) a passport, or (4) a Tribal enrollment or identification card issued by any federally-recognized Indian Nation.

609. Violations of this Alcohol Ordinance. Any person guilty of a violation of this Ordinance shall be liable to pay the Nation a civil fine not to exceed \$1,000 per violation as civil damages to defray the Nation's cost of enforcement of this Alcohol Ordinance. In addition to any penalties so imposed, any license or permit issued hereunder may be suspended or canceled by the licensing designee for the violation of any of the provisions of this Alcohol Ordinance. This suspension and/or cancellation may be appealed in the Delaware Nation Court. The appellant shall be responsible for any filing fee and/or court costs associated with any appeal.

610. Possession of Alcohol Contrary to This Alcohol Ordinance. Alcohol possessed contrary to the terms of this Alcohol Ordinance are declared to be contraband. Any Tribal

agent, employee, or officer who is authorized by the Executive Committee to enforce this section shall have the authority to, and shall, seize all contraband.

611. Disposition of Seized Contraband. Any officer seizing contraband shall preserve the contraband in accordance with appropriate law. Upon being found in violation of this Alcohol Ordinance by the Executive Committee, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Nation.

Taxes:

701. Sales Tax. There is hereby levied and shall be collected a tax on each sale of Alcoholic Beverages on Tribal Land in the amount determined by the Executive Committee. The tax imposed by this section shall apply to all retail sales of Alcohol on Tribal Lands and shall preempt any tax imposed on such Alcohol sales by the State of Oklahoma.

702. Payment of Taxes to Nation. Tribal taxes from the sale of Alcoholic Beverages or on Tribal Lands shall be paid over to the Trust Agent of the Nation.

703. Taxes Due. Tribal taxes from the sale of Alcoholic Beverages on Tribal Lands are due within thirty (30) days of the end of the calendar quarter for which the taxes are due.

704. Reports. Along with payment of the taxes imposed herein, the taxpayer shall submit an accounting for the quarter of all income from the sale or distribution of Alcoholic Beverages and as well as for the taxes collected.

705. Audit. As a condition of obtaining a license, the licensee must agree to the review or audit of its books and records relating to the sale of Alcoholic Beverages and on Tribal

Lands. Said review or audit may be done annually by authorized agents or employees whenever, in the opinion of the Executive Committee, such a review or audit is necessary to verify the accuracy of reports.

Profits:

801. Disposition of Proceeds. The gross proceeds collected by the Executive Committee or its designee from all licensing provided under this Alcohol Ordinance, or the imposition of civil penalties for violating this Ordinance, or from the taxation of the sales of Alcoholic Beverages on Tribal Lands, shall be distributed as follows:

- a. For the payment of all necessary personnel, administrative costs, and legal fees for the operation and its activities.
- b. The remainder shall be turned over to the Trust Agent.

Severability and Miscellaneous:

901. Severability. If any provision or application of this Alcohol Ordinance is determined upon review by a court of competent jurisdiction to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this Ordinance or to render such provisions inapplicable to other persons or circumstances.

902. Prior Enactments. Any and all prior ordinances, resolutions or enactments of the Executive Committee which are inconsistent with the provisions of this Alcohol Ordinance are hereby repealed.

903. Conformance with Tribal, State, and Federal Law. This Ordinance conforms with all Tribal law and governing documents. All provisions and transactions under this Ordinance shall be in conformity with Oklahoma State law regarding the sale of Alcoholic Beverages and to the extent required by 18 U.S.C. § 1161, provided that § 1161 shall not be deemed to waive Tribal sovereign immunity in any respect, and with all Federal laws regarding alcohol in Indian country.

904. Enforcement. All actions to enforce the provisions of this Ordinance brought by the Executive Committee or its designee shall be filed in the Delaware Nation Court or Court of competent jurisdiction for the Delaware Nation of Oklahoma, which shall have exclusive jurisdiction over the enforcement and interpretation of this Ordinance.

905. Effective Date. This Ordinance becomes effective as of the date the Secretary of the Interior certifies the Ordinance and publishes it in the **Federal Register**.

Amendment:

1001. Amendment or Repeal. This Ordinance may be amended or repealed by a majority vote of the Executive Committee. Amendments of this Ordinance will be published in the **Federal Register** to become effective.

Sovereign Immunity:

1101. Nothing contained in this Alcohol Ordinance is intended to nor does in anyway limit, alter, restrict, or waive the Nation's sovereign immunity from unconsented suit or action. Tribal Alcohol licensees entitled to assert the defense of Tribal sovereign immunity shall not

be deemed to have waived that immunity in any dram-shop action in any court, whether Tribal, Federal, or State.

Dram-Shop Actions:

1201. The Delaware Nation Court or Court of competent jurisdiction for the Delaware Nation shall have exclusive jurisdiction over any dram-shop action against a Tribal Alcohol licensee.

[FR Doc. 2019-15544 Filed: 7/19/2019 8:45 am; Publication Date: 7/22/2019]